

Application No. 10/680,459

Docket No.: NY-HUBR 1230-US

REMARKS

Entry of the amendment is requested.

The amendment to claim 12 is supported, for example, by page 1 of the specification.

All pending claims have been rejected under 35 U.S.C. § 103 in view of Bialer plus Ross and French. According to the Advisory Action:

“Bialer teaches more than audiogenic clonic seizures as a model of idiopathic epilepsy. Bialer teaches that AWD 131-138 decreases the number and duration of spontaneous spike-wave discharges in WAG rats, which is a model of absence epilepsy which as taught by French is a form by idiopathic epilepsy. In response to Applicants arguments over the French et al. reference in which Applicants argue that French teaches that particular types of seizures are symptoms of idiopathic epilepsy and not form of idiopathic epilepsy, it is pointed out that French teaches that patients with idiopathic generalized epilepsy syndromes usually have more than one seizure type and that treatments for different types of epilepsy require different treatment mixtures. Therefore, it is obvious that if a patient shows with different forms of epilepsy and absence epilepsy is one of the forms and it is associated with idiopathic epilepsy, treatment with AWD 131-138 would necessarily treat idiopathic epilepsy, as taught by Bialer. In more clear terms, if idiopathic epilepsy is characterized by one type of epilepsy such as absence epilepsy, then AWD 131-138 would effectively treat idiopathic epilepsy.”

The rejection is traversed.

The Examiner's statement of the rejection refers to patients generally; however that is not what is claimed.

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Claim 12 recites that "patient" is a dog. All remaining claims depend from claim 12 and hence require that the subject is a dog.

As such, Thomas Vet. Clin. of North America: Small Animal Practice, 30(1):183-203 (2000), which is of record in the case (see the Office Action of January 16, 2007). According to Thomas, at 186:

"True absence seizures are rare, or at least rarely recognized in veterinary medicine."

Thomas refers, at footnote 56, to Podell, Vet. Clin. North Am. Sm. Animal Practice, 26(4):779-809 (1996), a copy of which is attached. Please note page 782:

"The major form of nonconvulsive seizure is the 'absence' variety manifested as impaired consciousness only. This seizure type is poorly documented in animals."

These statements are rather important to bear in mind because the claimed method relates to veterinary therapy, i.e., treatment of dogs.

The Examiner's argument appears to be that if "AWD 131-138," i.e., the compound recited in all claims, were useful in treating absence seizures, it is obvious that it could be used to treat idiopathic epilepsy, because idiopathic epilepsy can be characterized by absence seizures.

The references employed by the Examiner, however, do not speak to veterinary therapy, i.e., dogs. Bialer discusses a rodent model where AWD 131-138 was shown to be used in a model that is NOT idiopathic epilepsy. Indeed, as the French reference, relied upon by the Examiner makes clear, "absence seizures" are characteristic of different types of epilepsy. Hence, if an absence seizure were occurring, one would not, ipso facto, conclude that the subject suffering from the seizures were experiencing idiopathic epilepsy. Indeed, given the teaches of Thomas, one would not expect an absence seizure to occur in a dog.

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If an animal does not exhibit a condition for which a specific therapy is mentioned, why would one then treat the animal with that therapy? There is simply no motivation or suggestion to do so, and a *prima facie* case cannot be made out.

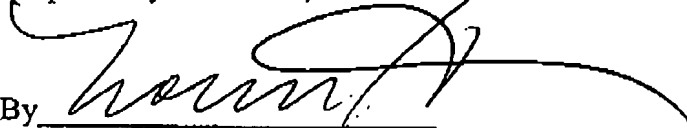
In view of the foregoing, it is believed that the rejection should be withdrawing and claims 12-17 and 19 should proceed to allowance.

* * *

If any fees are due, authorization is given to charge our Deposit Account No. 50-0624, under Order No. NY-HUBR 1230-US (10312533) from which the undersigned is authorized to draw.

Dated: December 3, 2007

Respectfully submitted,

By 

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Attachment: